

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-13-1-5-00336-16  
45-004-16-1-5-00468-17  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-08-262-001.000-004  
**Assessment Years:** 2013 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2016 assessments of his property located at 1969 W. 13<sup>th</sup> Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$3,200 for 2013 and \$3,100 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On August 6, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record contains the following:

Petitioner’s Exhibit 1: Property Record Card for 2014-2018

5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.<sup>1</sup>

---

<sup>1</sup> The Assessor offered no exhibits.

## BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. Here, the property's assessment decreased from 2012 to 2013 and from 2015 to 2016. Nowacki therefore bears the burden of proof for both 2013 and 2016.

## SUMMARY OF CONTENTIONS

8. Nowacki's case:
  - a. Nowacki discussed the City of Gary Redevelopment Commission's recent sale of 41 parcels in the Emerson area to MVAH for a price of \$200 per parcel. He also cited to statements from the Director of the Redevelopment Commission that land in Gary has little or no value. While the Assessor recognizes that property value in Gary is decreasing, an article from the Hammond Times shows that Gary's tax rate is 3 ½ times that of surrounding communities. Nowacki alleges the city's strategy is to keep the taxes as high as possible to prevent individual ownership of property so that the Redevelopment Commission can make special deals with third parties. *Nowacki testimony.*
  - b. Nowacki acquired the property in 2007 for \$61 at a tax sale attended by approximately 500 people, which is the only market for these kinds of properties. The Property Record Card lists the property's neighborhood life cycle as improving, but it is not. Nowacki requested an assessed value of \$1,800 for both assessment years. *Nowacki testimony.*
9. The Assessor's case:
  - a. The Assessor contends that Nowacki provided no substantial evidence to support his requested valuations for 2013 or 2016, and he recommends no change to the assessments. *Metz testimony.*

## ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the property's 2013 or 2016 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY

- ASSESSMENT MANUAL at 3. “True tax value” does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property’s 2013 and 2016 assessments should be \$1,800, but he failed to present any probative market-based evidence to support that value. Nowacki offered some general statements about the Redevelopment Commission’s recent sale of 41 parcels and the purportedly decreasing property values in Gary. He also commented on Gary’s tax rates and speculated regarding why they are higher than those of surrounding communities. But statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. To the extent Nowacki was asserting that his purchase price of \$61 reflects the property’s correct value, we disagree. The purchase price of a property can be the best evidence of a property’s value. *Hubler Realty Co. v. Hendricks Co. Ass’r*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to prove that the sale met the requirements of an open-market, arm’s-length transaction. Nor did he attempt to relate the purchase price to either valuation date. Consequently, the purchase price is not probative evidence of the property’s market value-in-use.
- e. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use for 2013 or 2016, he failed to make a prima facie case for a lower assessment for either year. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the

assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 and 2016 assessments.

ISSUED: November 5, 2018

---

Chairman, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

---

Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.